

**AN IMITATION OF LAW:  
The Use of Administrative Detention in the 2003 Armenian Presidential  
Election**

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## Summary

Since the mid-1990s, Armenian authorities have used administrative detention as a tool of repression, locking up protesters and activists at times of political tension. The 2003 presidential election and its aftermath mark the most sustained, extensive abuses in the last seven years. In February and March 2003, the police used the Code of Administrative Offenses, which sets out penalties for public order misdemeanors, to lock up dozens of opposition activists and supporters for periods of up to fifteen days. The police and courts applied the Code arbitrarily, claiming that opposition rallies and marches were “threats to public order” or “unauthorized,” and that any of the tens of thousands of participants could be punished. The arrests disrupted the opposition candidate’s campaign, and intimidated opposition supporters engaged in peacefully protesting the election result. They appeared aimed at stifling public criticism of the conduct of the vote—which was won by incumbent President Robert Kocharian, amid serious claims of election fraud.

The abuses stem both from ambiguities in the Code itself and from the actions of police and courts, which routinely ignore Code provisions that provide protections for defendants. The Code contains a number of vague terms and at times contradictory provisions that invite inconsistent application. Police officials and other authorities, for their part, often erroneously claim that those held on administrative offenses do not have the same rights as those charged under the criminal code. They routinely hold cursory court hearings, closed to the public, deny defendants access to legal counsel, and do not allow defendants any opportunity to call witnesses in their defense. These actions violate defendants’ rights, established in the Code and in international human rights law, to a public trial, to legal counsel, to know the charges against them, and to call witnesses in their defense.<sup>1</sup> Procedural violations, and a short-circuiting of the judicial process appear to be the norm in police and court application of administrative detention.<sup>2</sup>

Since independence in 1991, Armenia has enacted a number of legal reforms to protect due process rights. Failure to reform the Soviet-era administrative detention system to bring it into accord with prevailing international norms, however, is subverting this progress. This paper describes Armenia’s administrative detention system, documents its use against opposition supporters, and details due process violations in its implementation.

Human Rights Watch calls on the Armenian government to ensure that law enforcement and judicial authorities do not arbitrarily detain and intimidate political activists in the forthcoming parliamentary elections and constitutional referendum, scheduled for May 25. Human Rights Watch calls on the international community to make reform of the system of administrative detention a part of its relationship with the government of Armenia. Human Rights Watch also urges the Armenian government to take serious measures to eradicate the abuse of administrative detention. Such measures should include:

- Reform of the administrative courts to ensure their genuine independence from the law enforcement agencies and the executive, and to ensure that they protect due process guarantees

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<sup>1</sup> See Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 6 of the European Convention on Human Rights (ECHR).

<sup>2</sup> Administrative detention is customarily understood to mean detention ordered by a non-judicial body. However, in this case the detention is determined by a court. The same due process guarantees afforded criminal defendants under Article 14 of the ICCPR and Article 6 of ECHR also apply in such cases. Although the Armenian practice in most respects conforms to judicially determined detention, for the sake of simplicity and clarity we shall continue to refer to it as administrative detention throughout this document.

contained in the Code of Administrative Offenses (or its successor law), the Constitution, and Armenia's international human rights obligations.

- Reform of the Code of Administrative Offenses to make it fully consistent with the framework of current Armenian law, removing anachronisms, and clearly relating the substance of administrative offenses to existing laws or normative acts. This would reduce opportunities for arbitrariness in determining what constitute administrative offenses.
- Legal reform to ensure that the police may not use administrative arrest as a license for arbitrary and incommunicado detention. Its time limit should be set clearly at three hours, as certain language in the Code stipulates, rather than being open-ended, as other Code language makes possible. The obligation for police to maintain a transparent system of registering all detainees should be legislated unambiguously, and vigorously enforced. Police officers who fail to do so should be held accountable.
- Introduction of a clear right to appeal judicial decisions regarding "administrative" detention, and the removal of practical barriers to its realization. A procedure for the conduct of appeal hearings should be introduced, and a right of further appeal to the Court of Cassation should be introduced, as provided for in the civil and criminal procedure codes. The right of appeal must in practice protect the individual's interest in liberty, in that the defendant may both immediately challenge detention and have a genuine opportunity to secure conditional release pending the final decision of the appeal.
- Legislation or normative acts regulating public demonstrations and marches should be introduced. Any such law should set out a procedure for challenging denial of permission.

### **Administrative Arrest and Detention in Theory and Practice**

#### **The legal and procedural framework**

The 1988 Republic of Armenia Code of Administrative Offenses governs minor public order offenses that do not accrue a criminal record. It retains many references to obsolete Soviet laws and institutions, and has some internal inconsistencies, but does set out key due process guarantees for defendants. However, these do not include a clear right of appeal, and they are often couched in vague language that leaves room for multiple interpretations.

Several articles of the Code provide for a penalty of detention, notably: 172, "Petty hooliganism;" 180.1: "Violation of the defined procedure for organizing and holding meetings, marches, and demonstrations;" and 182: "Malicious disobedience of a legal order made by the police or people's militia."<sup>3</sup>

According to the Code, cases brought under the preceding articles are heard by district court judges. Cases brought under some other articles may be heard by administrative commissions formed by a wider range of non-judicial official bodies, such as local executive authorities and the police (Article 223).

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<sup>3</sup> Under these articles, there are three main sentencing options: either a fine or a 20 percent deduction from the offender's salary, lasting one to two months and known as "correctional labor." "Administrative detention of up to fifteen days" is a third sentencing option reserved for, "exceptional cases, where due to the circumstances of the case and a consideration of the personality of the offender it is judged that the aforementioned sanctions will prove insufficient." The other articles under which detention sentences of up to fifteen days are possible are 175 – drinking or being drunk in public; and 97.2 and 97.3 – careless disposal of nuclear waste, or interfering with the work of officials at nuclear sites.

Articles 261 and 262 of the Code give the police the right to arrest alleged violators of public order for up to three hours. However, in one of the Code's apparent contradictions, Article 262 also stipulates that: "People arrested for violating the defined procedure for holding meetings, marches, and demonstrations, or for acts of minor hooliganism, are detained for as long as necessary before their case is investigated by a judge or police chief."

The defendant has the right to familiarize himself with the case materials, give explanations, make intercessions and petitions, call witnesses, and be represented by a lawyer, who may exercise these rights on his client's behalf (Articles 267, 270, 271). The court report, drawn up after the hearing, includes an account of "[t]he explanations of the parties to the case, their intercessions" and "information on making the decision public, clarification of the terms and procedures for making an appeal" (Article 280).

If the court or administrative commission finds the defendant guilty ("administratively liable"), the resulting decision must include details of what the investigation found, and the normative act the offender has violated (Article 281). The sanction determined by the court or administrative commission takes effect immediately, and a copy of the decision is sent to the offender within three days (Article 283).

The Code does not offer the defendant a clear procedure or avenue for making an appeal. This right can be inferred from several of its articles (270, 286, 288), yet the Code also states that the decisions of district courts are final (Articles 286, 287). It allows appeals to be filed within ten days of sentencing, either "to a higher body" or "by a procurator." The offender may appeal after this deadline if he can convince the relevant body that there were valid reasons for the delay. Significantly, article 290 of the Code excludes all the articles that set out sentences of administrative detention (e.g. 172, 180.1, 182) from its provision for suspension of the sentence pending the final decision of the appeal, although an appeal lodged by a procurator does suspensory effect (Article 250).

### **Departures from the framework in practice**

In practice, the Armenian police and district courts have introduced short cuts and arbitrariness into implementation of the Code. These first came under a spotlight in 1996, after they were applied against political demonstrators. Prominent Armenian lawyer Tigran Janoian commented: "Procedural abuses in the implementation of the Code were not widely known about prior to 1996, probably because until then the victims were non-political. It was much more hidden."<sup>4</sup> The chairman of the Yerevan Center and Nork-Marash District Court confirmed that Articles 267, 270, 271, and 280 are routinely violated, stating that: "In administrative cases there is no argument ... lawyers take part in very few cases. But even when they do, they are largely redundant anyway, since their interventions are not recorded. No report of the proceedings is made."<sup>5</sup>

The way in which "administrative" justice is implemented has come to be shaped by the larger defects of Armenia's criminal justice system, in which the prosecution is traditionally strong, and legal defense weak.<sup>6</sup> District court judges lack genuine independence,<sup>7</sup> and tend not to challenge the law enforcement agencies. District courts have proved compliant in handing out ten- or fifteen-day "administrative"

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<sup>4</sup> Human Rights Watch telephone interview, Yerevan, May 21, 2003.

<sup>5</sup> Human Rights Watch interview with Zhora Vartanian, Yerevan, March 11, 2003.

<sup>6</sup> See *ArmeniaWeek* articles, Zara Chatinian, "Arguing the Case: Tradition of legal defense evolves slowly," February 22, 2002; and Zhanna Alexanian, "A Question of Law: What is an insult?" November 9, 2001. Available in the 'Archives' section at <http://www.armeniaweek.com/>.

<sup>7</sup> The Ministry of Justice nominates such judges for terms of five years, through the Council of Justice, a judicial oversight body chaired by the president of Armenia. The Armenian Helsinki Committee showed that at least one judge of Yerevan's Center and Nork-Marash District Court has declared his subordination to the Ministry in his official letterhead. See T. Janoian and L. Simonian, "The System of Administrative Justice in Armenia," *Ditord/Observer* magazine No. 4, 2002. Available at: [http://www.hra.am/ahc/english1/4\\_e/frame\\_e.htm](http://www.hra.am/ahc/english1/4_e/frame_e.htm)

sentences, often simply on a police officer's assertion that the defendant swore at him or disobeyed his instruction. The Armenian Helsinki Committee opined that: "while dispensing administrative justice, courts in fact perform 'the function of an office of a notary public' for the police."<sup>8</sup>

According to Armenian human rights defenders, police now make frequent recourse to Articles 172 and 182 of the Code of Administrative Offenses, in order to detain people for questioning on crimes unrelated to the alleged public order misdemeanor,<sup>9</sup> or to extend a criminal suspect's preliminary detention in a police lockup beyond the seventy-two hours allowed under the criminal procedure code.<sup>10</sup>

Extending a suspect's time in a lockup in this manner allows the police more time to isolate and put pressure on the individual while they construct a more substantial criminal charge. In the past four years, at least one death in detention and several cases of alleged torture have been associated with detention under the Code of Administrative Offenses.<sup>11</sup>

### **Growing political use of administrative detention since the mid-1990s**

The first mass use of administrative detention in a political context was made against more than 200 supporters of defeated presidential candidate Vazgen Manukian, in September and October 1996. The arrests followed a large September 25 demonstration protesting election fraud, during which some of Manukian's supporters broke into parliament, beating the speaker and his deputy. The administrative arrests were accompanied by forced closures of opposition parties, numerous police beatings, and an army presence on the streets of the capital.

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<sup>8</sup> T. Janoian and L. Simonian, "The System of Administrative Justice in Armenia," *Ditord/Observer* magazine No. 4, 2002. Available at: [http://www.hra.am/ahc/english1/4\\_e/frame\\_e.htm](http://www.hra.am/ahc/english1/4_e/frame_e.htm)

<sup>9</sup> Three of twenty-seven men arrested at their homes in Lori region on the morning of December 19, 2000, and given ten-day administrative detention sentences for disobeying police officers (Article 182 of the code), complained to a local human rights defender that they were all interrogated about a murder. Human Rights Watch telephone interview with Arthur Sakunts, President of the Vanadzor office of The Helsinki Citizens' Assembly, May 12, 2003.

<sup>10</sup> Under article 11.3 of the criminal procedure code, after seventy-two hours any detained person must either be released or brought before a court on a criminal charge. Article 62.2 of the criminal procedure code reiterates the same guarantee in respect of criminal suspects.

<sup>11</sup> Amnesty International reported that Eduard Vardanian went to Abovian police station successively on February 25 and 26, 1999 to be questioned as a suspect in a murder case. On the second visit he was detained. When his mother went to the police station on March 1 she was told he had been cleared of involvement in the murder, but was sentenced to five days administrative detention as of that morning, for having twice failed to respond to a police summons to give evidence. She was asked to come to the police station again on March 4, when she was told that her son had thrown himself out of an upstairs window the previous evening and died, after confessing to a murder. "Armenia: Torture and ill-treatment: Comments on the second periodic report to the United Nations Committee against Torture," April 1, 2000, available at: <http://web.amnesty.org/library/Index/ENGEUR540022000?open&of=ENG-ARM> In another case, Karen Harutiunian and brothers Araik and Argishti Movsisian told the Armenian Helsinki Human Rights Association that they and a fourth man were tortured regularly the first half of a ten-day administrative detention sentence handed them by the Yerevan Center and Nork-Marash District Court. Police had detained them on August 9, 2002 and allegedly beat them, seeking confessions to robbery and murder. Before the expiry of the criminal procedure code's seventy-two hour limit for police detention the four were charged and sentenced for administrative offenses allegedly committed on August 10, 2002. The detainees claimed that during their administrative detention they were regularly handcuffed to chairs and beaten on the body with truncheons and chair legs. Araik Movsisian said that the mistreatment included asphyxiation – police officers tightened a belt around his neck, forced him to wear a gasmask, and restricted its air-intake. Mikael Danielian, chairman of the Helsinki Association, "Tortures in Armenia are still underway," available at: <http://www.hahr.am/english/open/obscoffit.htm>, and email to Human Rights Watch, April 23, 2003.

According to an analysis prepared by the Armenian Helsinki Committee, criminal charges were worked up against many of the opposition supporters while they were serving administrative detention sentences and denied defense counsel. Some of the administrative detention sentences were handed out to punish infractions allegedly committed in public places at times when, according to the materials of the subsequent criminal cases, the defendants were in police detention, undergoing interrogation. The police were able to get away with such tactics because: “The [administrative offenses] trials were held without the presence of the alleged ‘perpetrators,’ without hearing their explanations, without ascertaining those persons’ whereabouts, and, most importantly, only on the basis of the reports submitted by policemen.”<sup>12</sup>

Administrative detention was again used on a large scale in 2002, when authorities responded to a series of protest rallies held in the capital by targeting participants, rather than the leaders. A series of demonstrations in Yerevan started in April 2002 as a protest against the removal of broadcasting rights from the independent A1+ television company, and were kept up until June by a group of opposition parties, which used them to call for President Kocharian’s resignation or impeachment. In the days following such rallies, police detained protestors at their homes, or summoned them to local police stations. Dozens were put through district courts, and handed administrative fines or detention, in what appeared to be concerted action directed at deterring further participation in the continuing rallies.<sup>13</sup>

### **The 2003 presidential election**

President Robert Kocharian, the incumbent, appeared to hold overwhelming advantages in the election campaign.<sup>14</sup> Yet in the lead up to the first round of voting on February 19, two opposition candidates, Stepan Demirchian<sup>15</sup> and Artashes Geghamian, attracted significant support. Kocharian garnered just less than 50 percent of the votes cast, and, pursuant to Armenian election law, a runoff between Kocharian and Demirchian was announced for March 5.

Successive pro-Demirchian rallies between the first round and the runoff attracted tens of thousands to the center of Yerevan. The authorities began arrests of Demirchian campaign staff and candidate proxies on February 22, sentencing dozens of them to terms of administrative detention, mostly for having participated in “unauthorized” rallies.

Allegations of widespread ballot stuffing, intimidation, and problems with tabulation marred both the first round and the March 5 runoff. The Demirchian campaign disputed Kocharian’s victory, and continued a series of peaceful protest rallies in subsequent weeks. The authorities responded with dozens more administrative arrests.

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<sup>12</sup> T. Janoian and L. Simonian, “The System of Administrative Justice in Armenia,” *Ditord/Observer* magazine No. 4, 2002. Online at: [http://www.hra.am/ahc/english1/4\\_e/frame\\_e.htm](http://www.hra.am/ahc/english1/4_e/frame_e.htm), accessed March 3, 2003.

<sup>13</sup> Various news sources, e.g. Helsinki Human Rights Association article: “The Opposition Arrests,” May 30 – July 2, 2002, available at <http://www.hahr.am/english/open6/weeklyop.htm>; Radio Free Europe/Radio Liberty Armenia report: “Opposition claims ‘unprecedented’ police crackdown on activists,” May 17, 2002, available at: <http://www.armenialiberty.org/armeniareport/report/en/2002/05/ADDEB223-389D-46A6-8DA7-495E575B3872.asp>.

<sup>14</sup> At the outset of the campaign, opposition to Kocharian was split between ten rival candidates. Virtually all the broadcast media were supportive of Kocharian. The electoral code handed the president and allied political parties the majority of nominations to all election commissions. For additional background information, see Human Rights Watch, *World Report 2002*, “Armenia,”: <http://hrw.org/wr2k3/europe2.html>.

<sup>15</sup> Stepan Demirchian is the son of the late Karen Demirchian, the former Soviet-era leader of Armenia, who, while serving as parliamentary speaker, was killed when gunmen invaded the Armenian parliament in October 1999. In March 1998 Karen Demirchian was defeated in a presidential election runoff by Robert Kocharian that many international observers denounced as flawed.

Demirchian challenged the election result in the Armenian Constitutional Court. On April 16 the court ruled that the election result should stand, but that the use of administrative detention in the context of the election harmed Demirchian's campaign and violated Armenia's obligations under international law.<sup>16</sup>

### **Abuse of Administrative Arrest in the 2003 Presidential Election**

#### **The opposition demonstrations of February to April 2003**

In the period between the February 19 first round and March 5 runoff of the presidential election, the Demirchian campaign staged several rallies in the center of Yerevan, each of which attracted tens of thousands of supporters. Rallies held on February 21 and 23 drew particularly large crowds. Thereafter, rallies on February 26, March 1, and March 3 numbered fewer supporters. From February 23 onward, many Demirchian supporters from outside Yerevan were prevented from accessing the capital on rally days, as police blocked the highways.<sup>17</sup>

On Monday March 3, the Kocharian election campaign responded with a political rally of its own, held at the same time as a Demirchian rally proceeded in another part of downtown Yerevan. Some of those attending the Kocharian rally complained to journalists that they were not there on their own initiative, but were bussed or led there en masse by their employers, with adverse consequences threatened for non-attendance.<sup>18</sup>

After the March 5 runoff the Demirchian campaign continued to stage rallies in the center of Yerevan at intervals of several days or a week, to protest alleged election fraud. Attendance at these rallies was not as high as during the period between the election rounds.<sup>19</sup>

#### **Rendering opposition rallies illegal**

Although the Demirchian rallies and protest demonstrations were largely peaceful,<sup>20</sup> the governing authorities portrayed them as a threat to public order and political stability, and used this as grounds for arrests.

#### *A "threat to state order"*

The day after the large Demirchian rally of February 21, President Kocharian warned on television: "We shall react decisively and harshly to any attempt at disrupting public order."<sup>21</sup> Appearing to give a green

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<sup>16</sup> "Decision of the Constitutional Court of the Republic of Armenia on the case of the dispute on the results of the elections for the Republic of Armenia president held on March 5, 2003," No. 412, Yerevan, April 16, 2003 (unofficial translation made available to Human Rights Watch).

<sup>17</sup> OSCE sources confirmed that highways were blocked or traffic filtered on rally days. The chief of the Talin district traffic police was dismissed, allegedly for failing to prevent local opposition supporters from reaching the Demirchian rally in Yerevan on February 23, 2003.

<sup>18</sup> Julia Hakobian and John Hughes, "Monday Mass: Demirchian and Kocharian crowds hold Yerevan captive in gridlock," *ArmeniaNow.com*, March 3, 2003. Online at: <http://www.armenianow.com/2003/specialedition/march03/>, (accessed April 23, 2003).

<sup>19</sup> Participants reported that a significant minority of those present were plainclothes police officers (whom they recognized), drawn from different Yerevan districts and surrounding regions. Human Rights Watch interviews with Smbat Matevossian, Yerevan, March 30, 2003, and Alita Sardarian, Abovian, April 2, 2003.

<sup>20</sup> Human Rights Watch observation, and the assessment of Peter Eicher, head of the OSCE election observers, who commented that: "We were attending these demonstrations and found that they were essentially peaceful rallies." Emil Danielyan and Hrach Melkumian, "OSCE observers 'very concerned' about post-election arrests," Radio Free Europe/Radio Liberty Armenia report, February 25, 2003. Available at: <http://www.armenialiberty.org/armeniareport/report/en/2003/02/43C34D47-73A5-4E65-B2C1-D409F6D5C10D.asp>

<sup>21</sup> Media reports, including: Julia Hakobian, "Decision 2003: Kocharian talks, Demirchian walks as round two begins," *ArmeniaNow.com*, February 24, 2003; and "Armenia's president, opposition on collision course over election," Agence France-Presse, February 22, 2003.

light to a crackdown on participants at unauthorized rallies, he also said that: “The opposition is powerful when it acts within the limits of the law, but as soon as it goes beyond those limits, it gives the state the right to use force.”<sup>22</sup> The same day, the army general staff stated: “The actions of the opposition affect the political balance and threaten the constitutional order and security of Armenia. We call on them to stop this action.... If there is a threat to state order, Armenia’s armed forces will not take a passive position... [They will] stand shoulder to shoulder with the lawful authorities.”<sup>23</sup>

*“Unauthorized” rallies and marches*

The Armenian authorities arbitrarily declared all of the opposition’s rallies “unauthorized.” Armenia’s legal vacuum on the regulation of public demonstrations facilitated this. The Armenian constitution upholds citizens’ rights to public assembly,<sup>24</sup> but, authorities infer from Article 180.1 of the Code of Administrative Offenses that they have broad discretion to reject requests for permission to hold rallies. Although municipal officials’ decisions and opinions on whether or not to approve any public demonstration lack a legal foundation, police and courts regarded them as “the defined procedure” mentioned by Article 180.1.

No national law has been enacted to regulate constitutional provisions on the right to freedom of peaceful assembly. In Yerevan, where most significant public demonstrations take place, the mayor’s office has not promulgated any relevant by-law.<sup>25</sup> The only legal instrument mentioning demonstrations appears to be a presidential edict of May 6, 1997 on state management of the city of Yerevan. One of the edict’s provisions states that “under the procedure defined by law” the Mayor “decides the issues connected with gatherings, meetings, demonstrations, marches, and other mass events in the Yerevan area.” No such procedures, however, have ever been adopted regulating public demonstrations. Nor does any decision by the mayor’s office appear to be applicable. In practice, the mayor’s office has claimed that the edict awards it complete discretion over whether or not to authorize any given public demonstration, without reference to a “procedure defined by law.”

From mid February through April 2003, whenever the Demirchian presidential campaign organized an election or protest rally in Yerevan, it notified the mayor’s office in writing several days in advance, requesting the authorities’ assistance in the provision of public order. The mayor’s office typically issued a written reply containing the phrase: “we find the meeting... inappropriate.”<sup>26</sup> Such replies, which neither amount explicitly to a ban on the given demonstration, nor elaborate the legal basis of any ban, have nevertheless been used by the police to classify most opposition demonstrations as “unauthorized.” In turn, the chairman of the Yerevan Center and Nork-Marash District Court, which has handed out dozens of short prison sentences on the basis of Article 180.1, stated: “We do not consider it the court’s

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<sup>22</sup> “Armenian president threatens force against opposition,” Interfax report, February 25, 2003.

<sup>23</sup> “Armenia’s army warns opposition to shelve protests,” Agence France-Presse, February 22, 2003.

<sup>24</sup> Articles 26 and 44 of the Constitution of the Republic of Armenia state respectively: “Citizens are entitled to hold peaceful and unarmed meetings, rallies, demonstrations, and processions,” and: “The fundamental human and civil rights and freedoms established under Articles 23 - 27 of the Constitution may only be restricted by law, if necessary for the protection of state and public security, public order, public health and morality, and the rights, freedoms, honor and reputation of others.”

<sup>25</sup> In contrast, the Mayor of Vanadzor in northern Armenia promulgated a by-law in 2001, and in 2002 was obliged to withdraw one of its provisions – which restricted public demonstrations to one location in the town – after it was challenged in the Court of Cassation on the grounds of its incompatibility with Articles 26 and 44 of the Constitution.

<sup>26</sup> Reply on file with Human Rights Watch. Artur Mkrtchian, the deputy chief of the organization department of the Yerevan mayor’s office confirmed that it was typical of the replies his department has issued. Human Rights Watch interview, Yerevan, March 28, 2003.



job to question whether a demonstration was authorized or unauthorized. We rely on the information provided by the police.”<sup>27</sup>

When asked to describe the “procedure defined by law” used in deciding to withhold authorization for opposition rallies, the mayor’s office has cited instead a range of different contingencies—another political party had already applied to hold a demonstration at the same place and time;<sup>28</sup> the management of the Museum of Manuscripts had complained that the frequent Demirchian rallies outside its building were disturbing its work; or the police were too busy with other work to provide adequate security and order at the planned demonstration.<sup>29</sup>

On two occasions, in May 2002 and on March 31, 2003, the Yerevan city procurator’s office summoned opposition leaders and formally warned them that it was illegal for them to call more public demonstrations without the approval of the city authorities, and that they would face legal consequences if they defied the warning. On both occasions, the opposition leaders either ignored the summonses or refused to countersign the written warning.<sup>30</sup>

#### *Arrests of rally participants in lieu of leaders*

Authorities detained ordinary rally participants rather than organizers and leaders as stipulated in the Code.<sup>31</sup> Although officials have claimed that peaceful participants are never targeted, Human Rights Watch found significant evidence to the contrary.

Article 180.1 of the Code of Administrative Offenses does not envision punishment for simple participation in “unauthorized” demonstrations, only for “organizing and leading” them.<sup>32</sup> When asked to explain this discrepancy between the law and its application, the chairman of the Yerevan district court that has handed out the majority of jail sentences to demonstrators declined to comment.<sup>33</sup>

At a February 26 press conference, President Kocharian stated that nobody had been arrested simply for taking part in a Demirchian rally.<sup>34</sup> Ministry of Justice spokesman Ara Saghatelian echoed him, declaring that: “It is a myth that people were sentenced merely for walking on the streets. They were punished for acts committed during the rallies.” He insisted that Articles 172 and 182 of the Code of Administrative

<sup>27</sup> Human Rights Watch interview with Zhora Vartanian, Yerevan, March 11, 2003.

<sup>28</sup> The Yerevan Mayor’s Office gave permission to the pro-Kocharian Dashnaktsutun, Orinats Yerkir, and Republican parties to hold a rally outside the Museum of Manuscripts in central Yerevan at 3:00 p.m on March 1, 2003, while the Demirchian campaign planned a rally at 4:00 p.m. in the same place. In the event, the former rally did not materialize, and the Demirchian rally went ahead.

<sup>29</sup> Human Rights Watch interview with Artur Mkrtchian, deputy chief of the organization department of the Yerevan mayor’s office, Yerevan, March 28, 2003.

<sup>30</sup> Hrach Melkumian, “Opposition Continues Anti-Kocharian Rallies,” Radio Free Europe/Radio Liberty Armenia report, May 10, 2002. Available at: <http://www.armenialiberty.org/armeniareport/report/en/2002/05/B59AB534-9826-48F2-9D64-6DFBA9BC93FD.asp>. Karine Kalantarian and Hrach Melkumian “Prosecutors Warn Opposition Over ‘Illegal’ Rallies,” Radio Free Europe/Radio Liberty Armenia Report, March 31, 2003. Available at: <http://www.armenialiberty.org/armeniareport/report/en/2003/03/96D5347A-409C-432B-965A-61F01A92548D.asp>.

<sup>31</sup> Police used the same tactic with regard to the 2002 demonstrations.

<sup>32</sup> In an interview published in the pro-opposition newspaper *Aravot* on April 11, 2003, Albert Bazeian, a leading member of the pro-Demirchian Hanrapetutun (Republic) party said on behalf of his colleagues in the opposition leadership: “We have already announced several times that we are the ones organizing the rallies.... If the law enforcement bodies find fault, they should deal with us, rather than arrest innocent citizens who take part in the marches.” (“Leave innocent citizens alone,” *Aravot* Russian-language web edition, April 11, 2003.)

<sup>33</sup> Human Rights Watch telephone interview with Zhora Vartanian, chairman of the Yerevan Center and Nork-Marash District Court, Yerevan, February 26, 2003.

<sup>34</sup> Tigran Liloian, “Court punishes 134 opposition rally participants in Armenia,” ITAR-TASS News Agency report, February 26, 2003.

Offenses (hooliganism and disobeying a police officer) provided the grounds for most of the administrative detention sentences, rather than Article 180.1.<sup>35</sup>

Neither the Ministry of Justice nor the district courts have agreed to furnish human rights organizations with statistics or copies of all the relevant court decisions,<sup>36</sup> therefore making it difficult to ascertain how many opposition supporters were sentenced under each of the respective three articles, and on what grounds. However, Human Rights Watch has on file several court decisions grounded on Article 180.1, and on March 11, 2003, the chairman of the Yerevan Center and Nork-Marash District Court acknowledged that “probably most” of the many administrative sentences his court had handed out in connection with the opposition rallies were grounded on Article 180.1.<sup>37</sup>

#### *Rally-goers characterized as anti-social, criminal hooligans*

To reinforce its claim that nobody was arrested simply “for walking on the streets,” the government and pro-government media were at pains to associate the Demirchian rallies and campaign staff with criminality and anti-social behavior. Ministry of Justice spokesman Ara Saghatelian praised administrative arrests of rally-goers as a necessary prophylactic measure: “In our experience, if someone breaks a window his next step will be to stab somebody with the shards. We should be grateful that the police has seized them by the arm before they managed to do that.”<sup>38</sup>

On February 26, President Kocharian said that those arrested had attacked one of his election headquarters, blocked government buildings, and engaged in hooliganism. He also said that nineteen of those given administrative sentences had criminal records, and several of them were registered drug addicts.<sup>39</sup> The Ministry of Justice gave out information that from a quarter to a third of the administrative detainees had previously committed serious criminal offenses. The pro-government newspaper *Haiots Ashkar* published the details of these previous offenses, with regard to fifteen of the detainees.<sup>40</sup> A Demirchian campaign spokesperson retorted that these fifteen, who also figured in a Ministry of Justice list of detainees, in fact were not known to the Demirchian campaign.<sup>41</sup>

### **The campaign of arrests**

#### *February 21-27: the first wave of arrests*

In a first wave of arrests, roughly 160 chiefs and staff of regional and district Demirchian campaign headquarters, candidate proxies,<sup>42</sup> and even drivers<sup>43</sup> were taken to their local police stations.

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<sup>35</sup> Human Rights Watch interview, Yerevan, March 10, 2003.

<sup>36</sup> On March 10, 2003, the Ministry of Justice spokesman told the Armenian Helsinki Committee and Human Rights Watch that they could obtain copies of the decisions direct from the court. On March 11, Yerevan Center and Nork-Marash District Court chairman Zhora Vartanian told the two rights organizations that all the relevant decisions were at the Ministry of Justice. The Ministry declined a later written request from the Armenian Helsinki Committee to assist it in acquiring copies of the court decisions.

<sup>37</sup> Human Rights Watch interview with Zhora Vartanian, Yerevan, March 11, 2003.

<sup>38</sup> Human Rights Watch interview, Yerevan, March 10, 2003.

<sup>39</sup> “Armenian president denies mass arrests of opposition protestors,” Mediamax news agency report, February 26, 2003.

<sup>40</sup> “Approximately a quarter of the activists have criminal records,” *Haiots Ashkar*, February 26-28, 2003.

<sup>41</sup> Human Rights Watch interview with Dustrik Mkhrtarian, Yerevan, March 12, 2003. Human Rights Watch knows one of the fifteen cited by *Haiots Ashkar* to be a prominent opposition activist, yet evidence from interviews also provides some corroboration of the Demirchian spokesperson’s claim that extraneous people were included among the detainees. For example, Demirchian proxy Aram Abramian shared a cell with “two alcoholics, arrested to fill a quota. The judge told them they were sentenced for participation in an unauthorized rally, but they were so apolitical that they didn’t even know there was a runoff.” Human Rights Watch interview, Yerevan, March 12, 2003.

<sup>42</sup> These are candidate representatives accredited to polling stations, empowered under the electoral code to verify all aspects of the voting procedure.

These detentions disrupted the Demirchian election campaign in the lead-up to the March 5 runoff. Its leadership at district and regional level was degraded,<sup>44</sup> as was its ability to field candidate proxies on runoff day.<sup>45</sup> Many activists who were not detained nevertheless felt constrained by the risk of arrest, and went into hiding.<sup>46</sup>

Dozens of activists were arrested at their homes in different regions of the country the morning after police supposedly picked them out, among several tens of thousands, at an “unauthorized” rally in Yerevan in the late afternoon of February 21.

When police officers took opposition activists from their homes it was invariably on the pretext that the local police chief wanted to talk to them. Some activists accompanied the officers willingly, and some initially refused, but met threats in response. For example, Romik Mkhitarian asked to see an arrest warrant. The officers told him that if he refused to accompany them they would send commandos armed with automatic weapons to bring him in.<sup>47</sup>

In some cases where the police did not initially find the activist at home, they resorted to violent or extra-legal tactics.<sup>48</sup> There were instances of the police taking family members as hostages, to compel activists to give themselves up. For example, on February 23 police came to the home of Hanrapetutun activist Avraham Kirakosian. Not finding him, they took his twenty-year-old daughter, in her eighth month of pregnancy, to the police station for several hours, until her father arrived. They then released her, detained him, and sent him to court on an administrative charge.<sup>49</sup>

#### *March 1-17: conditional releases, continuing pressure*

Following international pressure, and after President Kocharian approved an intercession by Catholicos Garegin II, the head of the Armenian Apostolic Church,<sup>50</sup> about seventy-five of the eighty-six men serving election rally-related administrative detention sentences were released during the weekend of

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<sup>43</sup> Several coach drivers hired to drive Demirchian supporters from the regions to the February 21 rally in Yerevan were given administrative detention, deterring them and their colleagues from serving in this capacity again. Four Armavir coach drivers were arrested at home on the morning of February 22. At least one was released in the late evening of the same day; others were sentenced to terms of administrative detention. Human Rights Watch interview with the wife of one of the coach drivers, Armavir, March 16, 2003. The Helsinki Committee and the Helsinki Human Rights Association reported that drivers from Vedi, Artashat, and Masis were also arrested.

<sup>44</sup> For example, Romik Mkhitarian, the coordinator of the Demirchian headquarters in the Shengavit district of Yerevan, was detained on February 22. His deputy Ashot Poghosian filled the vacancy, yet was himself detained on March 4.

<sup>45</sup> The wife of the detained Demirchian campaign chief in Armavir said: “People were scared. Nobody wanted to be a candidate proxy for the runoff. They saw that the campaign chief was taken, so imagined what could happen to proxies. About ten to fifteen polling stations had no proxy coverage.” Human Rights Watch interview with Marina Harutiunian, Armavir, March 16, 2003.

<sup>46</sup> Human Rights Watch interviews with Leva Yeghazarian, Karen Ekimian, Yerevan, March 11, March 12, 2003.

<sup>47</sup> Human Rights Watch interview, Yerevan, March 12, 2003.

<sup>48</sup> On February 26, 2003, in their second attempt to find Hanrapetutun activist Abraham Poghos at home, Armavir police broke in, injuring a family member with fragments from a glass door panel. Human Rights Watch interview with Abraham Poghos, Yerevan, March 4, 2003.

<sup>49</sup> Human Rights Watch interview with Avraham Kirakosian, Yerevan, March 4, 2003; and telephone interview with his daughter, Nune, Yerevan, April 1, 2003.

<sup>50</sup> “Head of Armenian Church asks President to Free Opposition Protestors,” Arminfo news agency report, March 1, 2003.

March 1-2.<sup>51</sup> As a condition for their early release, detainees had to write pleas for clemency to the Court of Appeal, admitting their guilt and, allegedly, undertaking not to take any part in the March 5 runoff.<sup>52</sup>

During the day of the runoff, police detained several Demirchian proxies and observers, removing them from polling stations. Some were held for several hours and let go once voting and counting were finished.<sup>53</sup> Others were taken to court on administrative charges.<sup>54</sup>

During the first two weeks after the runoff, the police made desultory street arrests in connection with demonstrations. After a rally and march in central Yerevan had just ended on March 11, plainclothes police officers seized two participants and bundled them into unmarked cars.<sup>55</sup> On March 17, police in central Yerevan arrested six activists distributing leaflets about a planned rally, and allegedly beat some of them.<sup>56</sup> Police beat a press photographer at a rally on March 18.<sup>57</sup>

On March 15, police in the town of Vanadzor arrested human rights defender Arthur Sakunts. His Helsinki Citizens Assembly group had monitored the elections, and police broke up a public meeting he called to discuss electoral abuses. He was sentenced to ten days administrative detention for disobeying a police order.<sup>58</sup>

#### *March 18-22: the second wave of arrests*

During this five-day period, as post-election protest rallies continued, the police arrested approximately ninety Demirchian activists in Yerevan, Abovian, Artashat district, Talin, and other areas. Most were

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<sup>51</sup> Ara Saghatelian, Ministry of Justice press release, March 3, 2003.

<sup>52</sup> None of these statements has been made public. Human Rights Watch interviewed several men who described having written such statements, and a few who refused to sign them. The latter were therefore not included in the early release scheme and served their full sentences.

<sup>53</sup> For example, in the Yerevan suburb of Avan, the police detained several opposition activists during the count at polling station 0014/1, after the latter reportedly found that the votes cast considerably exceeded the number of registered electors, and a scuffle ensued. Shortly afterward, police armed with automatic weapons entered the Avan headquarters of the opposition Hanrapetutian party, and arrested three staff. All but one were released within one or two hours. Leva Yeghazarian, the local Hanrapetutian chief, was detained for twenty-four hours, and re-arrested at least three times over the following week. Human Rights Watch interview with Leva Yeghazarian, Yerevan, March 11, 2003.

<sup>54</sup> Among them, Liparit Badalian told Human Rights Watch that police arrested him at polling station 0256/12 in the Shengavit district of Yerevan just after he caught someone trying to place a falsified ballot paper in the box. Badalian was taken to Shengavit district court and sentenced to three days of administrative detention. Human Rights Watch interview with Liparit Badalian, Yerevan, March 12, 2003.

<sup>55</sup> Human Rights Watch interviews with Oganess Petrossian, Dasht village, Armavir district, March 16, 2003, and Ashot Mesropian (also from Dasht), Yerevan, March 19, 2003. The police released them both thirty hours later, ordering them to report back to the police station after eight hours. When they did so, Mesropian was taken to court and fined 500 Drams (85 U.S. cents) for having talked loudly in the street. Petrossian was not charged, but the police retained his internal passport.

<sup>56</sup> Five were released that evening. Artur Martirosian was taken outside Yerevan to Echmiadzin police station, served two consecutive administrative detention sentences, and was released March 31, 2003. Human Rights Watch interview with Artur Martirosian, Artur Hakobian (imprisoned together with Martirosian), and Manvel Muradian (head of Stepan Demirchian campaign in Echmiadzin), Yerevan, April 1, 2003.

<sup>57</sup> Merujan Minasian, an ethnic Armenian of Iranian citizenship, was working for the Arminfo news agency. He was arrested and allegedly beaten at Arabkir district police station, Yerevan. Human Rights Watch interviews with Dustrik Mkhrtarian, Demirchian campaign spokesperson, Yerevan, March 19, 2003, and eyewitnesses to his arrest Svetlana Avetisian and Alina Petoian, Yerevan, April 2, 2003.

<sup>58</sup> See HRW press release, "Human Rights Defender Imprisoned, Office Set On Fire," March 18, 2003, <http://hrw.org/press/2003/03/armenia031803.htm> and HRW letter to Chairman Tigran Sahakian and Procurator General Aram Tamazian, March 24, 2003, <http://hrw.org/press/2003/03/armenia032403ltr.htm>

taken from their homes—some for the second time. Dozens received administrative detention sentences.<sup>59</sup> There was at least one more instance of hostage-taking,<sup>60</sup> and an activist was run over trying to escape arrest when police stopped a bus of rally-goers on a highway. The victim was hospitalized in a coma.<sup>61</sup>

#### *April 7-9: around the presidential inauguration*

Several men and women were arrested after an April 7 demonstration in central Yerevan, and given administrative fines or terms of detention.<sup>62</sup> On April 9, the day of President Kocharian's inauguration, unarmed demonstrators tried to break through lines of riot police who sealed off the center of Yerevan. The police clubbed them, and arrested between eight and sixteen protestors. At least six were given administrative detention sentences.<sup>63</sup> Shortly after the clash, police entered the home of a senior Hanrapetutian party official, allegedly beat family members and took his twenty-year old son to a police station for several hours.<sup>64</sup>

### **Due process violations in administrative offenses proceedings**

#### *Incommunicado preliminary detention*

On bringing opposition activists to the police station, officers kept them in incommunicado detention, depriving them of counsel. This allowed police wide scope to pressure the activists to admit guilt.

In many cases, the police refused to inform or acknowledge to relatives and lawyers of people who had gone missing that they were in police custody. A lawyer who took on the cases of more than thirty activists taken in the first wave of arrests said that simply finding the people he had been tasked to represent was his primary task, and providing legal assistance came a distant second. The wife of an activist arrested in Armavir said: "For five days they gave no information. We did not know whether he was alive or dead."<sup>65</sup>

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<sup>59</sup> Lists were compiled by the Demirchian campaign headquarters and by the Armenian Helsinki Human Rights Association. Human Rights Watch interviewed four of those sentenced to administrative detention during this period, after their release: Armen Babaian, Ishkhan Gevorgian, Hamlet Akobian, Artur Hakobian, Yerevan, March 29, March 30, March 30, April 1, 2003.

<sup>60</sup> On March 18, Nune Babajanian, a single mother of three young children was taken from her home to Arabkir police station in lieu of her mother Julietta Sergoian – an active picketer of the presidential residence – but police relented and released her after three hours. Human Rights Watch interviews with Nune Babajanian (by telephone), Yerevan, April 1, 2003, and Julieta Sergoian, Yerevan, March 19, 2003.

<sup>61</sup> Suren Hovannisian, from Aragats village, Talin district. He later emerged from coma and was discharged from hospital. Human Rights Watch interviews with Demirchian campaign spokesperson Ruzanna Khachaturian, Yerevan, March 26 and (by telephone) May 21, 2003.

<sup>62</sup> "Arrests Continue," Ayb-Fe news agency report, April 7, 2003; Anna Israelian, "Is singing the Armenian national anthem a crime?" *Aravot* newspaper, Russian web edition, April 9, 2003.

<sup>63</sup> Emil Danielyan, Hrach Melkumian, Ruzanna Khachatrian, "Kocharian sworn in for second term amid tight security, opposition protests," Radio Liberty/Radio Free Europe Armenia report, April 9, 2003. Available at: <http://www.armenialiberty.org/armeniareport/report/en/2003/04/EC55966B-A151-4370-9F2F-3566DA90BB72.asp>. Hrach Melkumian, "Police launch criminal inquiry into violent opposition protest," Radio Liberty/Radio Free Europe Armenia report, April 10, 2003. Available at: <http://www.armenialiberty.org/armeniareport/report/en/2003/04/005DDE74-E0BD-428E-A027-214341ECFC2D.asp>. (Accessed May 21, 2003)

<sup>64</sup> This was the son of Aramazd Zakarian, whom, according to the Armenian Helsinki Human Rights Association, police made numerous unsuccessful attempts to arrest in March. The pattern of the son's detention suggests an attempt to use the hostage tactic to secure his father's arrest. "Armenian opposition reports on new arrests," Arminfo news agency report, April 9, 2003.

<sup>65</sup> Human Rights Watch interview with Marina Harutiunian, Armavir, March 16, 2003.

According to a 2002 Armenian law “On keeping arrested and imprisoned persons,” the police are obliged to give out information about detainees’ whereabouts to their relatives immediately, on the day of arrest.<sup>66</sup> Their failure to do so during the first wave of arrests, when more than 100 detainees were unaccounted for, was so glaring that the Ministry of Justice stepped in, on a one-off basis, to publish a list of them all.

When lawyers, relatives, or human rights groups tried to find detainees in custody, police did not cooperate. Lawyer Tigran Ter-Yessaian said: “When we go to police departments, we are told the detainee is in court. When we go to the court, they say he or she is in one of the police departments. Before the confusion is resolved, a court verdict for fifteen days of administrative detention has already been issued.”<sup>67</sup>

In Armenia, there is no system of obligatory, transparent registration of all detainees at police stations. Ter-Yessaian noted: “Wherever we went, they said, ‘No, he’s not here.’ The lack of any documentation of detentions makes it difficult for us to dispute. They can claim afterward that the detainee was not there at the exact time we came and asked.”<sup>68</sup> In two cases Human Rights Watch documented, police pretended detainees were not at a particular police station when they patently were.<sup>69</sup>

The police kept detainees for as long as they considered necessary, with little apparent reference to procedural rights guarantees. The ambiguity in Article 262 of the Code of Administrative Offenses, stipulating a limit of either three hours, or “as long as necessary before their case is investigated by a judge or police chief” for administrative arrest, appears to offer the police an unlimited term of preliminary detention.<sup>70</sup>

Since most were brought in on the pretext of “a chat” with the police chief, the legal basis of their detention was not immediately clear - whether or not they were arrested, and if so, whether under the administrative or criminal code.<sup>71</sup> With some detained activists the police were initially at a loss as to

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<sup>66</sup> Article 32.

<sup>67</sup> Ayb-Fe news agency report, February 26, 2003.

<sup>68</sup> Human Rights Watch interview, Yerevan, March 13, 2003. Police claim that they are obligated to maintain a registration system only for criminal suspects, and not those detained on administrative offenses. They then determine when to consider a detainee a criminal detainee.

<sup>69</sup> At 1:00 p.m. on March 17, 2003, staff at the Yerevan City Police Department told Human Rights Watch and the Armenian Helsinki Association they were not holding three Demirchian activists, arrested on the street as they leafleted in central Yerevan less than three hours before. When Human Rights Watch interviewed Artur Martirossian – one of the leafleters – on April 1, 2003, he said that he was held for the first two days at the Yerevan City Police Department. In another case, on February 22, 2003, staff at Echmiadzin police station were telling Gachik Harutiunian that they did not have his brother Vachik – arrested that morning at home in the village of Nor Kesaria – when, by chance, Gachik saw other officers taking his brother downstairs. Human Rights Watch interview, Nor Kesaria village, Armavir region, March 16, 2003.

<sup>70</sup> In practical terms, the only limit appears to be police discomfiture if and when public figures find out where the detainees are held and take a sustained interest. Two villagers, arrested at the end of a Demirchian rally in Yerevan on March 11, 2003, were released from Yerevan City Police Department thirty hours later. In the meantime friends, lawyers, OSCE observers, and opposition members of parliament had asked all the law enforcement bodies about their whereabouts, to no avail. Only after a duty officer at the City Police Department let slip that they were in fact holding them in custody were they released—one without charge, the other to face an administrative hearing the next morning, at which he was fined 500 Drams (about 85 U.S. cents). Human Rights Watch interviews with Dustrik Mkhrtarian, Hrayr Melkonian, Yerevan, March 14, 2003, and Varen Abrahamian, Dasht village, Armavir region, March 16, 2003.

<sup>71</sup> On February 21, 2003, at Avan district police station, Yerevan, police initially told Karen Safarian that he was suspected of a robbery, yet did not interrogate him about it. Four hours later they came up with an administrative charge – that he had threatened and abused the police officers who brought him from his home that morning (Human Rights Watch interview, Yerevan, March 10, 2003). Conversely, four senior regional Demirchian campaign activists

what to charge them with. With others, the police manipulated the ambiguity, threatening both criminal and administrative charges. At Echmiadzin police station, officers threatened to press criminal charges against Artur Hakobian if he refused to confess that he resisted and swore at the policemen who had just taken him from his home. He recalled: “I signed on the strength of their promise that I would only get two days of administrative detention.”<sup>72</sup>

From mid-March onward, police extracted either written confessions or undertakings to take no further part in rallies from a number of activists by threatening to beat them.<sup>73</sup> Shushan Arakilian, detained at the Yerevan City Police Department, stated that her three interrogators pointed out the lockup in the courtyard, said it was full of women, and that they would all be truncheoned that night: “Then they showed me black spots on the carpet and said it was blood. Through this kind of pressure they forced me to write that I took part in a rally and obstructed traffic.”<sup>74</sup> In several cases, police did use violence: Alita Sardarian alleged she was hit on the head with a plastic bottle of water;<sup>75</sup> Artur Martirossian recounted being hit with a pistol butt, then punched and kicked.<sup>76</sup>

### *Flawed court hearings*

In almost all cases, administrative court hearings against opposition activists were closed and cursory. Courts considered only police evidence, and did not give the defendant the opportunity to summon defense counsel or defense witnesses.

Several factors indicate that the judges acted under the influence of political authorities.<sup>77</sup> In many cases, judges issued the harshest administrative sentence possible—fifteen days detention—to opposition activists.<sup>78</sup> Some judges at Yerevan’s Center and Nork-Marash District Court were frank with defendants

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arrested at their homes in Armavir region on February 22 were initially assumed to be in administrative detention after police took them away and nothing was heard of them for five days. They were in fact charged with a criminal offence of organizing mass disturbances (under Article 206 of the criminal code, which carries a prison sentence of up to three years). Human Rights Watch interviews with Marina Harutiunian (wife of detainee Carlos Harutiunian), Armavir, March 16, 2003, and with Gachik Harutiunian (brother of detainee Vachik Harutiunian), Nor Kesaria village, Armavir region, March 16, 2003.

<sup>72</sup> Human Rights Watch interview, Yerevan, April 1, 2003.

<sup>73</sup> Rita Eganian, detained on March 21, 2003, at the Malatia-Sebastia district police station, Yerevan, recounted that a policeman told her: “If you go to a rally again, we’ll beat you so hard that your shoe size will go up from thirty four to forty two.” Human Rights Watch interview, Yerevan, March 30, 2003.

<sup>74</sup> Human Rights Watch interview, Yerevan, March 26, 2003.

<sup>75</sup> She was among four opposition supporters arrested as they left a doughnut café in central Yerevan after the rally of March 21. The alleged assault took place in the Arabkir district police station, Yerevan. She told Human Rights Watch that after the blow she had three spells of dizziness in the police station, causing officers to become concerned that they might have gone too far. The police officer who hit her allegedly retorted: “Take her straight to court. She’ll get fifteen days in prison. Let her die there. It won’t be anything to do with us.” Human Rights Watch interview, Abovian, April 2, 2003.

<sup>76</sup> Human Rights Watch interview, Yerevan, April 1, 2003. Martirossian said he was assaulted at the Yerevan City Police Department on March 13, by the head of the Criminal Investigation division: “I told him I was a Christian, and that since he hit me on my left cheek I should offer him my right cheek. So he hit me there too.”

<sup>77</sup> Henrikh Danielian, the chairman of the Council of Court Chairmen and of the Court of Cassation, felt this was the likeliest explanation for district court judges’ unusual reticence with him: “When courts hit problems with an aspect of law, they usually ring me for advice. On this, they did not.” Human Rights Watch interview, Yerevan, March 24, 2003.

<sup>78</sup> Some were given shorter periods of detention. The chairman of the Yerevan Center and Nork-Marash District Court cited this as refutation: “Many say that we are acting according to an order from the authorities. If that were so, we would have given everyone fifteen days, but we appraised each detainee, and handed out sentences in accordance with their individual circumstances.” Human Rights Watch interview with Zhora Vartanian, Yerevan, March 11, 2003.

about their one-sentence-fits-all policy. A judge told Karen Safarian: “Those who took part in the rally—we are giving them all fifteen days.” When Armen Babaian asked a judge to consider handing him a shorter sentence, the latter replied that: “his instructions were to put us all away for fifteen days—no less.”<sup>79</sup> Judges’ questioning of several defendants was blatantly political, such as: “Why do you play at opposition?”<sup>80</sup> and, “Why do you bad-mouth the government?”<sup>81</sup> They warned some not to participate in opposition rallies again.<sup>82</sup>

The police appeared to exercise control over the courts when they were in administrative session. During the week of February 22-28, when Yerevan’s Center and Nork-Marash District Court tried nearly one hundred Demirchian supporters, ‘Red Berets’ – police commandos – sealed off the building to the public. The chairman of the court acknowledged that their deployment was an initiative of the police leadership on which the court was not consulted.<sup>83</sup> As noted above, courts uniformly did not question police determination that rallies were “unauthorized.” One judge let slip to a defendant that, “Since the police have brought you, I have to give you a sentence.”<sup>84</sup>

Some defendants demanded lawyers, but court officials and police told them that they were either “not necessary” or “not allowed” in administrative cases.<sup>85</sup> Although he had a contract with defendant Edik Simonian, lawyer Nikolai Baghdassarian was barred from entering the Yerevan Center and Nork-Marash Court on February 22 to defend him.<sup>86</sup>

In the absence of public scrutiny or defense counsel, judges applied sloppy or arbitrary reasoning in their examination of cases, or none whatsoever.

In most cases, hearings lasted from a few seconds to a few minutes, and the written judgments were pre-prepared. The judge started Hrair Melkonian’s hearing by reading out his sentence—fifteen days detention for having participated in an unauthorized march. When Melkonian objected that he had not participated in the march, he related, “The judge just said, ‘It is proven’ and called a policeman to take me away.”<sup>87</sup>

While some judges alluded to the existence of proof without feeling it necessary to present it,<sup>88</sup> others floated hypotheses, such as: “You took part in an unauthorized rally, and you committed acts of

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<sup>79</sup> Human Rights Watch interview, Yerevan, March 12, 2003.

<sup>80</sup> Human Rights Watch interview with Shushan Arakilian, Yerevan, March 26, 2003.

<sup>81</sup> Human Rights Watch interview with Vartan Samsunian, Yerevan, March 30, 2003.

<sup>82</sup> Shushan Arakilian and Hamlet Akobian were warned. A judge threatened criminal charges against Arakilian if she attended another rally. Human Rights Watch interviews, Yerevan, March 26 and 30, 2003.

<sup>83</sup> Human Rights Watch interview with Zhora Vartanian, Yerevan, March 11, 2003. Lawyer Tigran Ter-Yessaian was among a crowd of lawyers, journalists, and relatives to whom the Red Berets denied access to the court: “I asked them, ‘By what order or right are you setting the rules here?’ One of them answered, ‘My uniform gives me the right.’” Human Rights Watch interview, Yerevan, March 5, 2003.

<sup>84</sup> Human Rights Watch interview with Laura Gevorkian, Yerevan, March 30, 2003. When Human Rights Watch interviewed court chairman Zhora Vartanian by telephone on February 26, our question about how many of the eighty-six tried to that point had been found not guilty initially perplexed him. After responding, “What do you mean, not guilty?” he recalled that, “one case was stopped.” At a later interview, on March 11, 2003, he said that his judges had quashed five or six cases within the previous three weeks.

<sup>85</sup> Three activists interviewed by Human Rights Watch were told this: Armenak Sargsian, Ashot Poghosian, and Artur Hakobian, Yerevan, March 5, March 12, April 1, 2003.

<sup>86</sup> Human Rights Watch interview with Nikolai Baghdassarian, Yerevan, March 10, 2003.

<sup>87</sup> Human Rights Watch interview, Yerevan, March 12, 2003.

<sup>88</sup> A judge at the Yerevan Center and Nork-Marash District Court countered Vartan Samsunian’s denial of wrongdoing by asking, “Do you want me to show you a video of you abusing the government?” Samsunian said he did, but no video was produced, and he was sentenced to ten days administrative detention. Samsunian noted: “He



hooliganism on Mashtots Avenue. You shouted or broke something, is that right?”<sup>89</sup> In other hearings, judges did not advance any arguments. Two Hanrapetutian party activists from the Shengavit district of Yerevan were each given three days detention without learning what they were charged with,<sup>90</sup> while a judge quelled Romik Mkhitarian’s objection to the absence of stated information or grounds for his fifteen-day sentence with the comment: “Just say thank you that we didn’t press a criminal charge.”<sup>91</sup>

The lack of outside scrutiny also enabled several cases of demonstrably gross arbitrariness by the courts. On February 22 the Yerevan Center and Nork-Marash District Court handed out some administrative detention sentences without conducting hearings in the presence of defendants. At least one police van with several detained activists inside was seen to drive up to the court, where a court official emerged and reportedly handed prepared judgments to the escorting police officers. The van then drove away without the defendants having set foot in court.<sup>92</sup> On March 21, on expiry of administrative detention sentences that the Echmiadzin District Court handed down against Artur Hakobian and Artur Martirosian, their police jailers told them that they had received an order not to release them. The two were driven to Hoktember District Court, which handed out new administrative detention sentences.<sup>93</sup>

Judges handed out shorter detention sentences or fines to women, or to some male defendants who were able to demonstrate health problems or awkward family circumstances. Substitution of a milder sentence also appeared to serve as a proxy for a not guilty verdict in some cases.<sup>94</sup>

### *Barriers to appeal*

Although Article 294 of the Code of Administrative Offenses states that, within ten days of sentencing, court verdicts “may be terminated by a procurator or modified by the judge personally as well as by the chairman of a higher court, on the basis of a complaint from an independent [sic] procurator,” and other articles imply that the defendant has a direct right of appeal (270, 286, 288) (though do not explain where to), all avenues of appeal are effectively blocked.

Procurators contest that lodging such appeals is beyond the parameters of their work, as redefined by legislation of the 1990s, and did not appeal any of the administrative offenses sentences related to the

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didn’t give me any document, so I just have to guess that my sentence was for ‘abusing the government.’” Human Rights Watch interview, Yerevan, March 30, 2003.

<sup>89</sup> Human Rights Watch interview with Aram Abramian, Yerevan, March 12, 2003. He denied taking part in the given rally, to which the judge responded: “Everyone you ask says no. How come so many people were there and they all deny? You were seen there.” Abramian received ten days of detention.

<sup>90</sup> Ashot Poghosian and Liparit Badalian, arrested respectively on March 4 and 5, 2003. Human Rights Watch interviews, Yerevan, March 12, 2003. Neither received documentation of their sentences.

<sup>91</sup> Human Rights Watch interview, Yerevan, March 12, 2003.

<sup>92</sup> Human Rights Watch interviews with Artak Zeynalian, Hanrapetutian activist, and Armen Khachaturian, lawyer of the Tanik nongovernmental organization, Yerevan, March 4 and 13, 2003. Both were eyewitnesses, part of a crowd of detainees’ relatives, journalists, and members of parliament who stood outside the court for several hours on February 22, 2003, trying unsuccessfully to gain access to the hearings inside. They said that others in the crowd outside the court recognized the detainees in the van as their relatives.

<sup>93</sup> Human Rights Watch interview with Artur Martirosian and Artur Hakobian, Yerevan, April 1, 2003.

<sup>94</sup> Artur Hakobian experienced both approaches. On March 18, 2003, a judge at Echmiadzin District Court lowered his sentence from the intended five to two days, to accommodate Hakobian’s son’s birthday. However, on expiry of that sentence Hakobian was taken to Hoktember District Court and sentenced to a further fifteen days. He recounted: “I protested, ‘But I didn’t do anything.’ The judge replied: ‘All right, let it be ten days then.’ I said to him, ‘If I didn’t have a wife and children I would now swear at you so badly that you would put me away for a year.’ So he said, ‘Very well then – seven days.’” Human Rights Watch interview, Yerevan, April 1, 2003.

2003 demonstrations.<sup>95</sup> However, the interpretation of the chairman of the Yerevan court that processed most of the arrested Demirchian activists was that only procurators could appeal his court's 'administrative' sentences.<sup>96</sup>

On February 5, 2003 the Council of Court Chairmen<sup>97</sup> issued an interpretation of Article 294 of the Code, establishing a right of appeal for detainees to the Criminal-Military Chamber of the Court of Appeal. However, virtually no courts, lawyers, or police were aware of the interpretation. The text itself was not widely published, and was difficult to access.<sup>98</sup>

In addition to failing to provide information on the right to appeal, courts and police also erected practical barriers to appeals. Copies of sentences are required for filing an appeal, but in many cases, courts did not provide these to detainees or their lawyers.<sup>99</sup> In one case, a detainee was taken from court to a police detention facility without being told his sentence. Only after serving two days there he discovered that he had been sentenced to fifteen days administrative detention.<sup>100</sup>

Police refused lawyers permission to meet with activists who were serving administrative detention sentences,<sup>101</sup> and the Court of Appeal completed the vicious circle by refusing to consider appeals lodged by lawyers who were engaged by detainees' relatives, rather than by the detainees directly.<sup>102</sup>

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<sup>95</sup> Comments of Procurator General Aram Tamazian in an interview to *Aravot* newspaper, published April 23, 2003, and Human Rights Watch interviews with Artur Mkrtchian, Lori Regional Procurator, Vanadzor, March 17 (by telephone) and 18, 2003.

<sup>96</sup> Human Rights Watch interview with Zhora Vartanian, chairman of the Yerevan Center and Nork-Marash District Court, March 11, 2003. Human Rights Watch has translated eight of the written decisions of his court on "administrative responsibility" in respect of Demirchian activists. Four made no mention of a right of appeal; three stated that the sentence could be appealed by a procurator, and one simply stated that: "The decision may be a subject of appeal."

<sup>97</sup> An official body chaired by the head of the Court of Cassation, Henrikh Danielian. Its function, defined by the 1998 Law on Courts, is to give recommendations to lower courts. It "studies court practice and on that basis gives recommendations and explanation on the application of laws." Human Rights Watch interview with Henrikh Danielian, March 24, 2003.

<sup>98</sup> Human Rights Watch received a copy of the interpretation (Decision No. 50, dated February 5, 2003) from the Chairman of the Council of Court Chairmen. See "Information on the Judicial System is inaccessible," an article by Sara Petrosian of the Association of Investigative Journalists of Armenia, available online at: <http://www.hetq.am/en/h-0103-count.html>. Several lawyers did file appeals to the Court of Appeals in any case, yet did so on the basis that a right of appeal is enshrined in the European Convention of Human Rights, rather than from knowledge of the Council of Court Chairmen's resolution.

<sup>99</sup> By March 5, 2003, Tigran Ter-Yessaian's team of lawyers had secured copies of court decisions in respect of only three of the thirty plus detainees sentenced in the week February 22-28, 2003 that their relatives had tasked him with assisting. On February 28 he and relatives of detainees sentenced by the Armavir District Court requested copies of the decisions from the court chairman. He said he would give them only after the March 5 runoff. When asked, "According to which law?" he reportedly responded: "I am the law." Human Rights Watch interview with Tigran Ter-Yessaian, Yerevan, March 5, 2003.

<sup>100</sup> Human Rights Watch interview with Arsen Avakian, Yerevan, March 14, 2003.

<sup>101</sup> Tigran Ter-Yessaian said that he and his team of lawyers were refused permission to see administrative detainees in Yerevan. Human Rights Watch interview, Yerevan, March 5, 2003. On April 18, 2003 the police chief of the town of Vanadzor, A. Alexanian, told Human Rights Watch that he would not allow anybody, including lawyers, to meet with Artur Sakunts, a human rights defender then serving a ten day administrative sentence in the Vanadzor police lockup.

<sup>102</sup> On March 26, 2003, Varuzhan Vartanian, head of the registry of the Court of Appeal, told Human Rights Watch that the previous day the court refused to consider an appeal lodged on behalf of Artur Sakunts by a lawyer engaged by Sakunts' father, and appeals by two women on behalf of their husbands, who were both serving administrative detention sentences.

The Court of Appeal also demonstrated its unwillingness or inability to take on the role designated to it by the February 5, 2003, Council of Court Chairmen interpretation in other ways. Reportedly, it has either dismissed appeals peremptorily in the minority of cases to which it did agree to grant a hearing,<sup>103</sup> or, in most cases, avoided holding appeal hearings altogether.<sup>104</sup> Defense lawyers related that the court cited the imminent or actual expiry of sentences as reason for putting aside appeals, thus declining to examine them as possible miscarriages of justice.<sup>105</sup>

### **Challenges from authoritative bodies to the abuse of administrative detention**

#### *The Code of Administrative Offenses and Armenia's international human rights commitments*

Armenian authorities often claim that those held on administrative offenses are not entitled to due process rights enshrined in Armenian and international law.<sup>106</sup> In doing so, they exploit the relative obsolescence and obscurity of the Code of Administrative offenses. The failure of Armenian authorities to remedy this situation invites the conclusion that they have been content to preserve the status quo, though there are indications that this may be changing.<sup>107</sup>

Until September 2002, the use of the Code of Administrative Offenses escaped serious scrutiny from the bodies that monitor Armenia's observation of its human rights obligations.<sup>108</sup> It was overlooked when Armenia's obligations to the Council of Europe were drawn up, prior to it joining that body in January 2001. Those obligations mandated reform of other legislation, such as the criminal code, containing

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<sup>103</sup> In April 2003, the Court of Appeal agreed to hold hearings on the cases of at least five Demirchian activists while they were still serving administrative detention sentences. The activists' lawyer, Tigran Ter-Yessaian, claimed that the appeal judge however dismissed the appeals automatically, without argumentation. Human Rights Watch telephone interview, Yerevan, May 22, 2003.

<sup>104</sup> The Court of Appeal set aside several appeals lodged by lawyer Tigran Ter-Yessaian in the final week of February 2003 in order to apply instead the early release scheme resulting from Catholicos Garegin II's intervention. Detainees were released over the weekend of March 1-2 after writing pleas for clemency. Later in March 2003 the court reportedly cited the pleas for clemency written in the context of the mass early release scheme as confessions, and thus as grounds for rejecting the appeals. Human Rights Watch interviews with Tigran Ter-Yessaian, and (by telephone) his assistant, Yerevan, March 13 and March 31, 2003. After agreeing to hear an appeal from Artur Sakunts subsequent to his release, the court did not convene a hearing, but sent him a letter rejecting the appeal. With little in the way of explanation, it stated that after studying the complaint and the materials of the case the court had decided to leave the District Court decision unchanged. The letter, dated April 9, 2003, was transcribed to Human Rights Watch over the telephone by Artur Sakunts, Vanadzor, on May 12, 2003.

<sup>105</sup> According to Tigran Ter-Yessaian, this was one of the arguments deployed by the Court after the early release scheme in early March 2003. Human Rights Watch interview, Yerevan, March 13, 2003. After lawyer Hovik Arsenian submitted the first appeal on behalf of Artur Sakunts on March 21, 2003, Tigran Sahakian, the chairman of the Criminal-Military chamber of the Court of Appeal reportedly telephoned him during the weekend of March 22-23 to request that he withdraw the appeal, on the ground that Sakunts' sentence was due to expire within three to four days time. Human Rights Watch telephone interview with Hovik Arsenian, Yerevan, March 24, 2003.

<sup>106</sup> Armenia ratified the International Covenant on Civil and Political Rights in 1991, the Convention Against Torture in 1993, and the European Convention on Human Rights (ECHR) in 2002. A new constitution was adopted after a referendum, in 1995.

<sup>107</sup> When, on March 12, 2003, Human Rights Watch asked Nikolai Arustumian, the head of the Ministry of Justice Legal Reforms Department whether there were plans to reform the Code of Administrative Offenses, he said he was unaware of any. But on March 24, 2003, in a written comment to the Armenian Service of Radio Liberty/Radio Free Europe, he stated: "the government of the Republic of Armenia has already undertaken to work on a draft Republic of Armenia Code of Administrative Offenses, thus possibly abstaining from applying administrative detentions." On March 19, 2003, Ministry spokesman Ara Saghatelian told Human Rights Watch that the Ministry was working on changes to the Code, and a draft would be submitted to Council of Europe experts.

<sup>108</sup> During its review of Armenia's second periodic report in November 2000, the U.N. Committee Against Torture was prompted by Amnesty International's reporting of the Eduard Vardanian case (see above) to ask the government delegation what "administrative detention" was, yet the committee made no specific comment on it in its concluding observations.

elements inconsistent with ECHR guarantees. However, in a September 26, 2002 resolution, the Parliamentary Assembly of the Council of Europe (PACE) urged the wholesale abolition of administrative detention in Armenia.<sup>109</sup> The leader of the PACE observers to the 2003 presidential election condemned the mass administrative arrests of opposition activists and suggested the setting of a deadline for reform of the Code of Administrative Offenses.<sup>110</sup>

*Challenges and justifications from Armenian higher judicial authorities*

On April 16, the Constitutional Court rejected Stepan Demirchian's legal challenge to the presidential election result but found that a range of significant election-related violations took place.<sup>111</sup> Among them, it found that:

Subjecting people to administrative detention for participation in unauthorized gatherings and demonstrations is an interference with the right of freedom of peaceful gatherings foreseen in Article 11 of the European Convention for Protection of Human Rights and Fundamental Principles. Such interference is in contradiction with the Article 11 of the Convention in cases when such interference is "not foreseen by the law", does not follow any reasonable purpose established in the Clause 2 of the Article 11 and is "not necessary in a democratic society" in order to achieve those purposes.

The court also recognized that the administrative detention of many of his candidate proxies harmed Demirchian's chances in the presidential election.<sup>112</sup>

Mindful of "the importance of ceasing electoral violations of the indicated nature during the upcoming Parliamentary elections," and espousing "a need for 'unconventional' ways of easing the lingering political tensions," resulting from "violations that 'created an atmosphere of mistrust and public strife,'" <sup>113</sup> the Constitutional Court made several ambitious recommendations that were challenged as

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<sup>109</sup> Provision 9 stated: "The Assembly further invites the authorities to revise the Administrative Code without delay. It urges them to abolish the provisions concerning administrative detention and to refrain from applying them in the interim. It warns the authorities of the abuses their application leads to, which are seriously at variance with the principles of the Organization." At this writing The Council of Europe does not yet have access to any translation of the Code of Administrative Offenses, therefore the PACE prescription appears to be guided not by analysis of the Code's provisions themselves, but by "the abuses their application leads to." The Armenian government allowed six months to pass before giving its first response, which was that it had undertaken no obligations to the Council of Europe with regard to administrative detention, and moreover did not consider the Parliamentary Assembly resolution to constitute an official Council of Europe communication, as it had not come from the Committee of Ministers. Natalia Voutova, the Council of Europe representative in Armenia, disagreed, stating that the September 2002 Parliamentary Assembly resolution was as mandatory as the June 2000 resolution that laid out Armenia's original obligations.

<sup>110</sup> Lord Russell Johnston, in answer to a question put by Human Rights Watch at a post-election press conference in Yerevan, March 6, 2003, and in a statement to the PACE, March 31, 2003.

<sup>111</sup> "Decision of the Constitutional Court of the Republic of Armenia on the case of the dispute on the results of the elections for the Republic of Armenia president held on March 5, 2003," No. 412, Yerevan, April 16, 2003 (unofficial translation made available to Human Rights Watch).

<sup>112</sup> Ibid. The ruling stated, "Investigation of the case shows the institution of proxies had a special importance in defending the interests of the Applicant, since he was not represented with a sufficient counterbalance in the commissions. However, a number of proxies were subjected to administrative detention in the second round and were deprived of the possibility of further active actions."

<sup>113</sup> Kaline Kalantarian, "Court chairman defends election ruling amid government fury," Radio Free Europe/Radio Liberty Armenia report, April 18, 2003, available at: <http://www.armenialiberty.org/armeniareport/report/en/2003/04/03D70C3A-B6F1-4B88-B7AF-F4A62489CB6C.asp>.

beyond its powers to make.<sup>114</sup> The governing authorities rejected and belittled other findings of the Court that might have the effect of obstructing a repetition of electoral falsifications and mass arrests in the upcoming May 25 parliamentary election and constitutional referendum.

One of these findings was: “After studying decisions of the courts of general instance in regard to proxies, the Constitutional Court finds that first of all such application of the institute of administrative detention in the country is in contradiction with European standards for the rule of law, and second—both the form and the content of decisions of similar nature made by the courts must be subject for discussion in both the Republic of Armenia (RA) Council of Court Chairmen and RA Council of Justice.”

Among the RA Council of Justice’s duties is the subjection of judges to disciplinary liability. It remained silent while district court judges were handing out dozens of dubious administrative sentences in connection with the Demirchian rallies. The body is headed by the president, and its vice-chairmen are the minister of justice and the procurator general. On April 23, 2003, it issued a written statement rejecting the Constitutional Court’s requirement that it discuss “the form and the content” of the administrative sentencing decisions, arguing that the Constitutional Court had no right to instruct it.<sup>115</sup>

The Council of Court Chairmen—a body established by the 1998 Law on Courts—planned a review of all the verdicts in mid-April 2003, in order to issue a new directive to the district courts. On March 24, 2003, its chairman briefed Human Rights Watch on the concerns that prompted his plans. The sample of ‘administrative’ court decisions in connection with the rallies he had already seen were, “ungrounded. There is no description of the corpus delicti; no indication of which normative act was broken; and the explanatory part is absent.”<sup>116</sup> He determined that a new directive to the district courts would demand improvements to the quality of verdicts—that the explanatory part be present and coherently argued, and the evidence be presented. It would set guidelines on procedure for court hearings. Lastly, it would rule out conviction on the basis of Article 180.1 of the Code of Administrative Offenses (organizing and leading unauthorized meetings), on the ground that, “the Article is in conflict with the Constitution.”<sup>117</sup>

The directive the Council of Court Chairmen eventually produced on April 25, 2003 marked a major departure from the intentions stated to Human Rights Watch. It justified the administrative court decisions in connection with the rallies as “on the whole, legal and well-grounded,” prompting the Armenian Helsinki Committee to denounce it as “a decision ordered up [by the authorities],”<sup>118</sup> in an attempt to undermine the Constitutional Court’s ruling on the administrative arrests.<sup>119</sup>

The Council’s directive concluded that: “Results of the summarization show that, in general, correct court practice has been established in regard to cases concerning administrative violations.” In direct

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<sup>114</sup> These included the holding of a “referendum of confidence” within a year, and a mechanism penalizing the beneficiary candidate at polling stations where district election commissions or courts fail to investigate complaints of irregularities.

<sup>115</sup> It argued that: “Article 100 of the RA Constitution, which establishes powers of the RA Constitutional Court does not foresee any power of that body to give assignments or instructions obligatory for the RA Council of Justice.... [T]he powers of the Council of Justice are listed in full in Article 95 of the RA Constitution, which does not foresee for the Council of Justice to discuss decisions of any court instance.... Consequently, the part of the RA Constitutional Court Decision addressed to the Council of Justice lacks legal justification, it is in contradiction to Articles 5, 95, 97 and 100 of the RA Constitution, as well as the Law ‘On the Council of Justice.’ Implementation of the RA Constitutional Court’s Decision by the RA Council of Justice will result in the Council of Justice exceeding its authorities and crude violation of the acting legislation, which, naturally, is unallowable.”

<sup>116</sup> Human Rights Watch interview with Henrikh Danielian, Yerevan, March 24, 2003.

<sup>117</sup> Ibid.

<sup>118</sup> Avetik Ishkhanian, chairman, in an eponymously titled interview published by *Aravot* newspaper, May 3, 2003.

<sup>119</sup> Human Rights Watch telephone interview with Avetik Ishkhanian, Yerevan, May 14, 2003.

contradiction of Chairman Danielian's earlier comments, it noted that: "With regard to the argument raised in the press that article 180.1 of the Code runs counter to Article 26 of the RA Constitution and hence is not applicable, it lacks grounds and is a result of poor understanding of the legislation regulating this field."

Controversially and dubiously, the Council stated that "the defined procedure" for public demonstrations and marches referred to in article 180.1 should be drawn from a Soviet law adopted in 1988 "On the order of holding meetings, rallies, street processions and demonstrations in the USSR."<sup>120</sup> This law of the Soviet Union has been inoperative in Armenia since its declaration of independence in 1991.<sup>121</sup> Until this Council of Court Chairmen directive was issued, it had reportedly never figured in 'Irtek', the computerized official register of Armenian laws. It was apparently inserted in late April or early May 2003, following the directive.<sup>122</sup>

After giving the district court sentencing decisions its mark of general approval, the Council of Court Chairmen went on to detail what it euphemistically described as "certain shortcomings":

In particular, court decisions often fail to present in detail the essence of violations, the wording of the evidence brought in the part of motivations and the court conclusions is brief, sometimes without analyses. The decisions do not show whether the offender had a lawyer or not. In part of them there is no mention of the right to appeal. The courts do not hand the copies of the decisions to the violators in time or in due order.

Proceeding from this evaluation, the directive issued a series of instructions to the district courts on better implementation of due process guarantees,<sup>123</sup> and a recommendation that the Judicial Training Center start teaching on issues of judicial practice in administrative violations cases.

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<sup>120</sup> In an interview published by *Aravot* newspaper, May 3, 2003, Avetik Ishkhanian, chairman of the Armenian Helsinki Committee, commented that, "the purpose of this law was to restrain popular movements for independence and democracy (including in Armenia)."

<sup>121</sup> Avetik Ishkhanian, chairman of the Armenian Helsinki Committee, elaborated that on September 25, 1991 the Supreme Soviet of Armenia adopted a law on the legal foundations of the independent state. Article 16 stated that laws of the Armenian Soviet Socialist Republic (but not of the USSR) would continue to function until the adoption of a new constitution, provided they did not contradict the declaration of independence. The non-applicability of USSR laws was further confirmed in article 11 of the Alma-Ata declaration of December 21, 1991, which replaced the USSR with the Commonwealth of Independent States. Email communication to Human Rights Watch, May 13, 2003.

<sup>122</sup> Human Rights Watch telephone interview with Avetik Ishkhanian, chairman of the Armenian Helsinki Committee, Yerevan, May 14, 2003.

<sup>123</sup> The Council of Court Chairmen's instructions were:

1. To draw the attention of the courts to the necessity of raising the quality of investigation of cases on administrative violations;
2. Being guided by the requirements of article 279 of the Code, the courts are obligated to examine in detail the materials about administrative violations in order to find out if an administrative violation was committed, if the person called to administrative responsibility is guilty; and if he is, whether he is subject to administrative responsibility and what sanctions must be applied against him;
3. Fulfilling the requirements of Article 267, the courts must explain to the person called to administrative responsibility his right to use the services of a lawyer, as well as give him the opportunity and time to engage a lawyer; When publicizing the court decision, the order of appealing must also be explained, following the clarification provided by CCC decision #50 of 05.02.2003 "On practice in application of article 294 of the RA Code of Administrative Violations."

It is necessary to hand the copy of the decision to the violator in due order and as soon as possible.

4. The decision to call a person to administrative responsibility, according to Article 281 of the Code, must contain the wording of the circumstances established by the case investigation, assessment of the explanations made by the violator and other participants in the case (witness, victim, expert, etc.) and other examined

However, by prefacing these instructions with a stamp of approval for courts' handling of administrative detention cases during the presidential election and its aftermath, the Council of Court Chairmen devalued the currency of what are otherwise creditable instructions for improving court procedure. Whether by default or design, the Council sent a political message that these instructions can be disregarded, just as its previous instruction establishing an appeals procedure for defendants in administrative cases was subverted by the police and courts.

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evidence, as well as the decision on the right to appeal. When determining the severity and the type of sanction, according to the requirements of Article 32 of the Code, it is necessary to take into account the nature of the violation, the person of the violator, the degree of his guilt, property status, the circumstances mitigating or aggravating his responsibility, which must also be reflected in the motivations part of the decision.

Republic of Armenia Council of Court Chairmen, Decision No. 51, Yerevan, April 25, 2003. Unofficial translation.